

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000340-001 DT

11/07/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

JAIME VEGA CARRILLO (001)

MICHAEL A BURKHART

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHX CITY COURT

Cit. No. #6096566

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
3) EXTREME DUI-BAC .15 OR MORE

DOB: 03/28/77

DOC: 08/11/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement without oral argument since its assignment on October 10, 2003. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the exhibits admitted, and the memoranda submitted by counsel.

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Appellant was charged of committing the following crimes on August 11, 2002; (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); and (2) Extreme DUI, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1382(A). Prior to trial, Appellant requested, in *limine*, for the trial court to rule on the admissibility of evidence and arguments he wished to offer regarding the general effect of body temperature variations and breathing patterns on the breath test results from an Intoxilyzer 5000.¹ The trial judge (the Honorable Deborah Griffith, Phoenix city Court Magistrate), asked particularly pertinent questions of Appellant's trial counsel: whether he had specific evidence in this case of an irregularity in Appellant's breathing pattern² or variation in Appellant's body temperature.³ The trial judge then declined to permit Appellant's evidence and arguments without other evidence that would show the relevance of this general information that might affect a breath test result. On the basis of stipulated police reports and exhibits, Appellant was found guilty of the two charges named above, and has filed a timely Notice of Appeal in this case.

The only issue presented on appeal is whether the trial judge erred in denying Appellant's pretrial Motions in Limine seeking to admit general evidence that "body temperature variations and breathing patterns" could affect a breath test reading from an Intoxilyzer 5000.⁴

The standard of review that this court must use in determining whether a trial judge judge's ruling on a motion admitting or refusing to admit evidence is abuse of discretion.⁵

Appellant cites Fuenning v. Superior Court⁶ and Moss v. Superior Court⁷ for the proposition that a criminal defendant may attack the accuracy of a breath test result. However, Appellant's reliance upon these cases is misplaced. Neither case stands for the proposition that irrelevant evidence about the Intoxilyzer and the breath test may be paraded before a jury. The trial judge's order explained the logical basis for her ruling:

Unless there's evidence that ...there was some type of irregularity in the Defendant's breathing pattern, unless there's some type of evidence regarding his particular partition ratio, and...(u)nless we have any evidence regarding his body temperature... (that would be) speculating on facts not in evidence, and it would be irrelevant.⁸

¹ R.T. of January 14, 2003, at 1-2.

² Id., at pages 3-4.

³ Id., at 2-10.

⁴ See Appellant's Opening Memorandum, at page 2.

⁵ State ex.rel McDougall v. Municipal Court of the City of Phoenix, 153 Ariz. 111, 735 P.2d 141 (App. 1986).

⁶ 139 Ariz. 590, 680 P.2d 121 (App.1984).

⁷ 175 Ariz. 348, 857 P.2d 400 (App. 1993).

⁸ R.T. of January 14, 2003, at pages 10-11.

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The Court finds no error in the trial judge's order denying Appellant's Motions in *Limine*. It appears that such motions did not seek to introduce relevant evidence.

IT IS ORDERED affirming the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT